



December 2014

DEFENSE INFRASTRUCTURE

Risk Assessment Needed to Identify If Foreign Encroachment Threatens Test and Training Ranges

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE DEC 2014		2. REPORT TYPE		3. DATES COVERED 00-00-2014 to 00-00-2014	
4. TITLE AND SUBTITLE Defense Infrastructure: Risk Assessment Needed to Identify If Foreign Encroachment Threatens Test and Training Ranges				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) U.S. Government Accountability Office, 441 G Street NW, Washington, DC, 20548				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT Same as Report (SAR)	18. NUMBER OF PAGES 36	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

Why GAO Did This Study

For many years, DOD has reported that it faces challenges in carrying out realistic training because of the cumulative result of outside influences—such as urban growth and endangered species habitat—that DOD refers to as encroachment. In January 2014, DOD reported concerns with security encroachment by foreign entities conducting business near its test and training ranges.

GAO was mandated by the House Armed Services Committee report accompanying a bill for the National Defense Authorization Act for Fiscal Year 2014 to review encroachment on DOD's test and training ranges. This report examines the extent to which DOD has (1) conducted a risk assessment to identify the existence and extent of any threats of foreign encroachment and (2) obtained information needed on specific transactions to determine if they pose a threat. GAO reviewed statutes, regulations, and guidance on federal agency oversight of transactions on federal land. GAO interviewed DOD and service officials, as well as officials from other federal agencies identified by DOD as having a role in such transactions.

What GAO Recommends

GAO recommends that DOD (1) develop and implement guidance for conducting a risk assessment on foreign encroachment and (2) collaborate with other federal agencies to obtain additional information on transactions near ranges. In written comments on a draft of this report, DOD concurred with both recommendations.

View [GAO-15-149](#). For more information, contact Brian Lepore at (202) 512-4523 or leporeb@gao.gov.

DEFENSE INFRASTRUCTURE

Risk Assessment Needed to Identify If Foreign Encroachment Threatens Test and Training Ranges

What GAO Found

The Department of Defense (DOD) has not conducted a risk assessment that includes prioritizing test and training ranges based on mission criticality, determining their vulnerabilities to foreign encroachment (i.e., foreign entities acquiring assets, such as mines or energy projects, or otherwise conducting business transactions near test and training ranges), and assessing the degree to which foreign encroachment could pose a threat to the mission of the range. Some DOD officials stated that they are concerned about foreign encroachment, which may provide an opportunity for persistent surveillance of DOD test and training activities. However, DOD has not prioritized its ranges or assessed such threats because, among other things, there is no clear guidance on how to conduct assessments of the risks and threats posed by foreign encroachment. Some DOD officials told GAO they have considered conducting such assessments, but DOD has not issued guidance directing the services to conduct these assessments. Officials from the Navy and the Air Force stated that given the unique nature of each range, it would be difficult to assess their criticality. However, Navy officials stated that they had expected to issue guidance for conducting risk assessments sometime in 2015. Without clear guidance from DOD for the services to follow in conducting a risk assessment, DOD may not be able to determine what, if any, negative impact foreign encroachment may be having on its test or training ranges.

Elements of a Risk Assessment

Criticality	Vulnerability	Threats
Identifies the consequence of the loss of a particular asset.	A weakness or susceptibility of an asset.	An adversary having the intent, capability, and opportunity to cause loss or damage.

Source: GAO analysis of DOD information. | GAO-15-149

DOD has not obtained sufficient information on commercial activity being conducted near test and training ranges in the level of detail officials say they need—such as if a U.S.-based entity is owned or controlled by a foreign entity—to determine if specific transactions on federally owned or managed land in proximity to ranges pose a threat to the range. Such information is generally not collected by other agencies with responsibilities for these transactions because, in some cases, legal, regulatory, or resource challenges may prevent them from collecting information that is unrelated to their agencies' missions. For example, the Federal Aviation Administration collects information about proposed structures that are more than 200 feet in height to support the agency's mission of maintaining a safe and efficient aerospace system, but does not collect information on the ownership of the companies building the structures because it is beyond the scope of its mission. DOD has identified some potential sources of information, but it has not formally collaborated with other federal agencies on how to gather this information. Leading practices state that agencies can enhance and sustain collaboration by engaging in several practices, including addressing needs and leveraging resources and agreeing on roles and responsibilities. Without engaging potential sources of information on commercial activities near its ranges, DOD is hindered in its efforts to determine if a project could present a threat to test or training range activities.

Contents

Letter		1
	Background	4
	DOD Has Not Conducted a Risk Assessment on Foreign Encroachment at Its Test and Training Ranges	11
	DOD Does Not Have Sufficient Information to Fully Identify Instances of Foreign Encroachment near Its Domestic Test and Training Ranges	14
	Conclusions	18
	Recommendations for Executive Action	19
	Agency Comments	19

Appendix I	Scope and Methodology	22
------------	-----------------------	----

Appendix II	Committee on Foreign Investment in the United States	27
-------------	--	----

Appendix III	Comments from the Department of Defense	29
--------------	---	----

Appendix IV	GAO Contact and Staff Acknowledgments	31
-------------	---------------------------------------	----

Table		
	Table 1: List of Organizations Contacted	24

Figures		
	Figure 1: DOD's Major Ranges and Military Airspace in the United States as of June 2014	5
	Figure 2: Mining Claims Near Fallon Range Training Complex	9
	Figure 3: Oil and Gas Activity in the Gulf of Mexico as of October 2013	10

Abbreviations

BOEM	Bureau of Ocean Energy Management
CFIUS	Committee on Foreign Investment in the United States
DOD	Department of Defense
OSD	Office of the Secretary of Defense

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



December 16, 2014

Congressional Committees

For many years, the Department of Defense (DOD) has reported that it faces growing challenges in carrying out realistic training at installations and training ranges because of the cumulative result of outside influences that inhibit military training and testing, which DOD refers to as encroachment. Traditionally, DOD has defined encroachment concerns as urban growth around the ranges; competition for radio frequencies or airspace; air pollution; noise pollution; unexploded ordnance and munitions components;¹ endangered species habitat; and protected marine resources. In 2001, DOD formed the Sustainable Ranges Initiative to act as the coordinating body for all encroachment issues affecting DOD ranges and to address encroachment through policy formulation, legislative initiatives, and compatible land use activities. More recently, DOD stated in its 2014 *Sustainable Ranges Report*² that it is concerned with security encroachment by foreign entities acquiring assets (such as mines or energy projects) or otherwise conducting business near test and training ranges, which may provide an opportunity for persistent surveillance of DOD test and training activities. In this report, we use the term “foreign encroachment” to refer to this issue.

The House Armed Services Committee report accompanying a bill for the National Defense Authorization Act for Fiscal Year 2014 mandated that we review DOD’s activities to prevent and mitigate encroachment at training ranges. This report evaluates the extent to which DOD has (1) conducted a risk assessment to identify the existence and extent of any threats posed by foreign encroachment to its domestic air, land, and sea test and training ranges; and (2) obtained information needed on specific

¹ Unexploded ordnance are munitions that (1) have been primed, fused, armed or otherwise prepared for action; (2) have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and (3) remain unexploded either by malfunction, design or any other cause. Munitions components—which DOD calls “constituents”—include things such as propellants, explosives, pyrotechnics, chemical agents, metal parts, and other inert components that can pollute the soil or ground water.

² Under Secretary of Defense (Personnel and Readiness), *2014 Report to Congress on Sustainable Ranges*, (Washington, D.C: Jan. 30, 2014).

transactions near test and training ranges to determine if these transactions pose a threat to the range.

To determine the extent to which DOD has conducted a risk assessment to identify the existence and extent of any threats posed by foreign encroachment to its domestic air, land, and sea test and training ranges, we reviewed statutes, regulations, and guidance pertaining to federal agencies' oversight of transactions by private entities on air, land, and sea. We compared DOD's efforts to key elements of a risk assessment from our prior work as well as criteria for identifying and protecting critical infrastructure that DOD uses in managing its Defense Critical Infrastructure Program.³ In addition, we reviewed DOD counterintelligence guidance and intelligence reporting on surveillance threats to DOD activities and facilities. We interviewed officials from the Office of the Secretary of Defense (OSD), the military service headquarters, intelligence agencies of each of the military departments, as well as the Defense Intelligence Agency and the Federal Bureau of Investigation.

To determine the extent to which DOD has obtained information needed on specific transactions near test and training ranges to determine if these transactions pose a threat to the range, we interviewed officials from OSD and the military service headquarters, as well as military department intelligence agencies, the Defense Intelligence Agency, and the Federal Bureau of Investigation. We also interviewed officials from selected federal agencies that DOD interacts with frequently including the Bureau of Land Management and the Bureau of Ocean Energy Management within the Department of the Interior, the Federal Aviation Administration within the Department of Transportation, and the Department of the Treasury, who all have a role in overseeing transactions on federal land surrounding DOD's ranges. We compared

³ See GAO, *Homeland Security: Key Elements of a Risk Management Approach*, [GAO-02-150T](#) (Washington, D.C.: Oct. 12, 2001); and *Defense Infrastructure: Management Actions Needed to Ensure Effectiveness of DOD's Risk Management Approach for the Defense Industrial Base*, [GAO-07-1077](#) (Washington, D.C.: Aug. 31, 2007). For these reports, we determined the key elements of a risk management approach by examining variations of this approach used by DOD, a large U.S. multinational corporation, and the Interagency Commission on Crime and Security in U.S. Seaports. Also see DOD Instruction 3020.45, *Defense Critical Infrastructure Program (DCIP) Management*, (Apr. 21, 2008), where DOD implements and establishes policy to manage the identification, prioritization, and assessment of defense critical infrastructure.

DOD's efforts in obtaining information to leading practices on decision making⁴ and collaboration from our prior work.⁵ We also selected four domestic DOD test and training ranges and interviewed officials from these ranges as well as officials of relevant agencies, such as the Bureau of Land Management and the Federal Bureau of Investigation, with responsibilities in proximity to these ranges. The four ranges we selected were the Nevada Test and Training Range at Nellis Air Force Base, Nevada; the Fallon Range Training Complex at Naval Air Station Fallon, Nevada; Eglin Air Force Base, Florida; and the Army's White Sands Missile Range, New Mexico. We selected these ranges based on discussions with DOD officials, to include at least one range from each military department, locations where security encroachment from foreign countries on federally managed land near test or training ranges has been raised as a concern, and ranges that are surrounded by federally owned land requiring coordination with other federal agencies. We selected these four ranges to gain insight into how range officials view foreign encroachment concerns. The information from these four ranges is not generalizable to all of DOD's domestic ranges. Further, because the majority of federally managed land is disproportionately located in the western part of the United States, the majority of our visits and discussions were with ranges in the western United States. We limited the scope of this engagement to transactions in which the federal government

⁴ See GAO, *Defense Logistics: A Completed Comprehensive Strategy Is Needed to Guide DOD's In-Transit Visibility*, [GAO-13-201](#) (Washington, D.C. Feb. 28, 2013); *Humanitarian and Development Assistance: Project Evaluations and Better Information Sharing Needed to Manage the Military's Efforts*, [GAO-12-359](#) (Washington, D.C.: Feb. 8, 2012); and *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington, D.C., June 1996). In these reports, we used criteria we developed by examining leading public organizations that were successfully pursuing management reform initiatives and becoming more results-oriented. We identified three key steps to result-oriented organizations, including using performance information as a basis for decision making.

⁵ See GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration Among Federal Agencies*, [GAO-06-15](#), (Washington, D.C., Oct. 21, 2005). This report identifies key practices that can help enhance and sustain agency collaboration. To identify practices for sustaining collaboration, we reviewed academic literature and prior GAO and Congressional Research Service reports in this area. We interviewed experts in coordination, collaboration, partnerships, and networks from organizations such as the National Academy of Public Administration, the IBM Center for The Business of Government, and the University of California, at Berkeley. We also considered how the Government Performance and Results Act and the Office of Management and Budget address collaboration among agencies.

plays a role in approving, evaluating, or permitting the project. Appendix I provides further information on our scope and methodology.

We conducted this performance audit from July 2013 to December 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

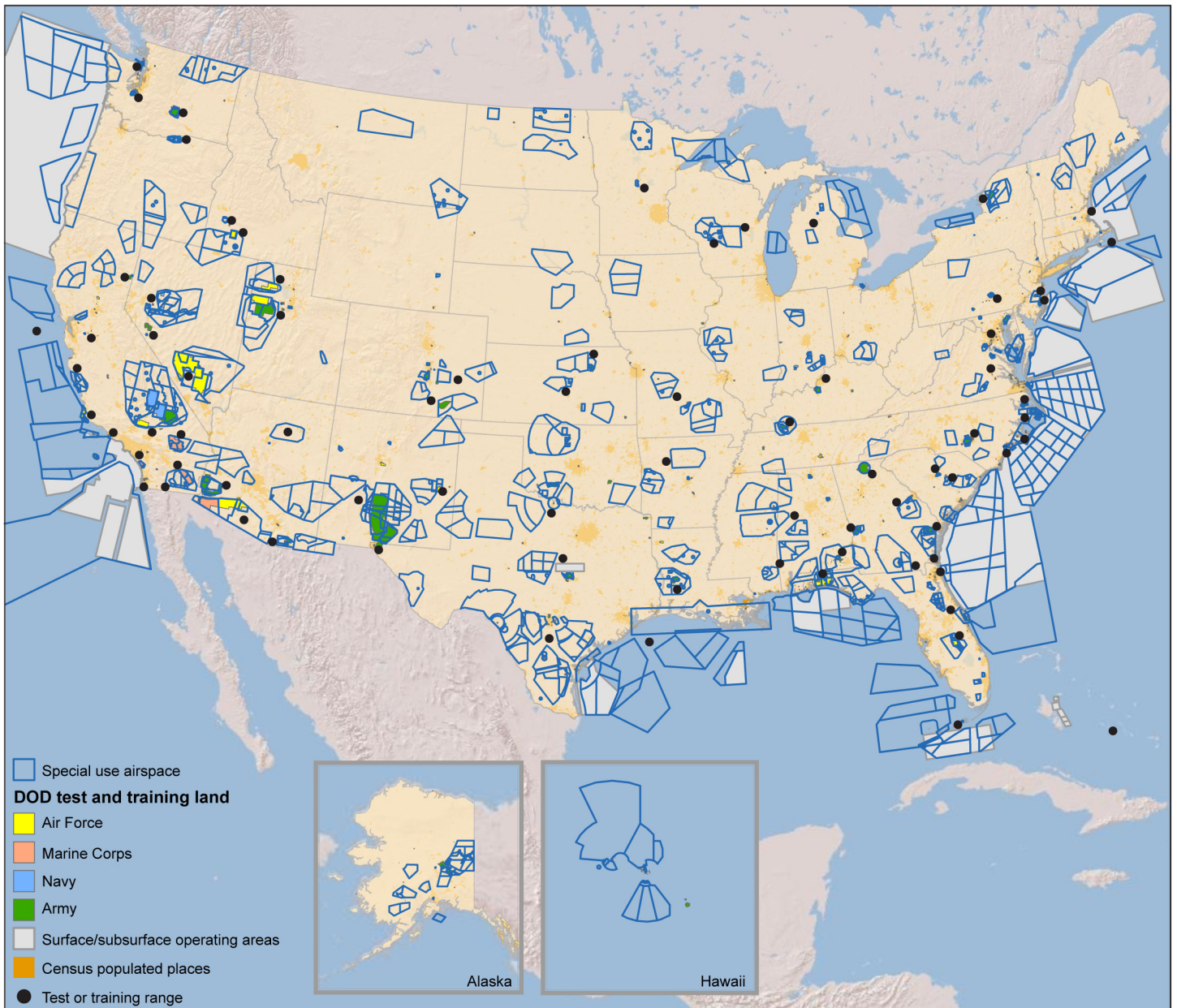
Background

DOD's Test and Training Ranges

Military test and training ranges are used primarily to test weapon systems and to train military forces. Test ranges are used to evaluate warfighting systems and functions in a natural environment and under simulated operational conditions. Training ranges include air ranges for air-to-air, air-to-ground, drop zone, and electronic combat training; live-fire ranges for artillery, armor, small arms, and munitions training; ground maneuver ranges to conduct realistic force-on-force and live-fire training; and sea ranges to conduct ship or submarine maneuvers. In February 2014, DOD reported to Congress that it had 533 test and training ranges throughout the United States and overseas. These included 456 Army ranges, of which 384 were in the United States; 23 Navy ranges, of which 18 were in the United States; 40 Air Force ranges, of which 35 were in the United States; and 14 Marine Corps ranges, of which 13 were in the United States. Figure 1 shows the location of major DOD test and training ranges throughout the United States as of June 2014.⁶

⁶ For this report, we use the term "major ranges" to describe both the Major Range and Test Facility Bases and the Primary Training Ranges. The Major Range and Test Facility Bases encompass the largest, most-fully-equipped ranges whose primary mission is to provide test and evaluation capabilities to support the DOD acquisition system. The Primary Training Ranges are typically smaller, lesser-equipped ranges whose primary mission is to support the routine continuation training of combat units.

Figure 1: DOD's Major Ranges and Military Airspace in the United States as of June 2014



Source: Department of Defense (DOD). | GAO-15-149

Notes:

For this report, we use the term "major ranges" to describe both the Major Range and Test Facility Bases and Primary Training Ranges. The Major Range and Test Facility Bases encompass the largest, most-fully-equipped ranges whose primary mission is to provide test and evaluation capabilities to support the DOD acquisition system. The Primary Training Ranges are typically

smaller, lesser-equipped ranges whose primary mission is to support the routine continuation training of combat units.

Special use airspace consists of that airspace wherein activities must be confined because of their nature, or wherein limitations are imposed upon aircraft operations that are not a part of those activities, or both.

Entities and Processes That Govern Commercial Activities on Areas Under Federal Jurisdiction or Otherwise Subject to Federal Review

Before DOD can determine whether a project or transaction poses a potential security threat to a range by providing a foreign entity a permanent platform for observing operations, it must first become aware of the proposed project or transaction. Multiple federal entities may be involved in identifying and approving potential business activities near DOD ranges. DOD, working with these federal entities, uses multiple methods to determine what activities are occurring in proximity to its ranges. None of these methods, with the exception of the Committee on Foreign Investment in the United States (CFIUS), discussed below, was designed to consider security concerns. The following entities and processes are available to DOD to become aware of and gather information on projects located near ranges.

- **CFIUS**, an interagency committee chaired by the Department of the Treasury and including DOD as a member, reviews certain covered transactions to assess the impact on national security of foreign control of U.S. companies, such as by considering the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security.⁷ DOD has the opportunity to comment on these transactions, including raising any security concerns. For more information on CFIUS, see appendix II.
- **The Bureau of Land Management** within the Department of the Interior administers over 245 million acres of federal land for a variety of uses, including energy development, recreation, and timber harvesting. The Bureau issues a wide variety of permits, licenses, or leases for use of public land, including permits and leases for energy development, and administers mining claims. According to Bureau of Land Management and DOD officials, local Bureau of Land Management personnel may work with DOD installations within their jurisdictions to notify them of projects in proximity to the installation

⁷ A covered transaction is defined as any merger, acquisition, or takeover that results in foreign control of any person engaged in interstate commerce in the United States. In this context the term "person" includes corporations and other business associations with legal personhood.

and test and training ranges. In some cases, the office may notify the installation when leases are issued or projects are proposed in proximity to test and training ranges.

- **The Bureau of Ocean Energy Management** within the Department of the Interior promotes energy independence and economic development and manages the natural resources of the Outer Continental Shelf, including oil and gas, marine minerals, and renewable energy. Under a 1983 Memorandum of Agreement, the Bureau and DOD consult to resolve conflicts between Outer Continental Shelf exploration and development and the requirements for DOD to use the Outer Continental Shelf for national defense and security.⁸ Following these consultations, DOD and the Department of the Interior agree on areas that may require deferral from leasing or that can be leased subject to lessee advisories or lease stipulations allowing for joint use.
- **The Bureau of Safety and Environmental Enforcement** within the Department of the Interior works to promote safety, protect the environment, and conserve resources offshore through regulatory oversight and enforcement. Key functions of the Bureau include oil and gas permitting, facility inspections, regulations and standards development, safety research, data collection, technology assessments, field operations, incident investigation, environmental compliance and enforcement, and oil spill prevention and readiness.
- **The Federal Aviation Administration** within the Department of Transportation works to provide a safe and efficient aerospace system and reviews proposed structures for obstruction concerns. In addition, parties proposing any project over 200 feet in height or within certain distances of an airport or runway are required by law and regulation to provide notice and certain project information to the Federal Aviation Administration. As part of its evaluation process, the Federal Aviation Administration's obstruction evaluation system automatically notifies interested agencies, including DOD and the individual military services, based on the agencies' preferences. DOD's Siting Clearinghouse, which was set up to work with renewable energy project developers to mitigate encroachment concerns at DOD installations, is automatically notified about all renewable energy projects filed with the Federal Aviation Administration.

⁸ The Outer Continental Shelf is all submerged lands lying seaward of state coastal waters which are under U.S. jurisdiction.

-
- **The National Environmental Policy Act of 1969**⁹ process requires environmental reviews of certain actions¹⁰ on federally controlled land. As part of this process, the public must be notified of impending action on federal land and is invited to comment. DOD may be included as a cooperating agency when a project is located near a DOD installation or when there is an identified DOD interest involved.¹¹
 - **Community Planning and Liaison Officers** at Navy and Marine Corps installations establish relationships with nearby communities and local governments, and provide a mechanism by which the installations can become aware of and address any concerns stemming from proposed projects near ranges.

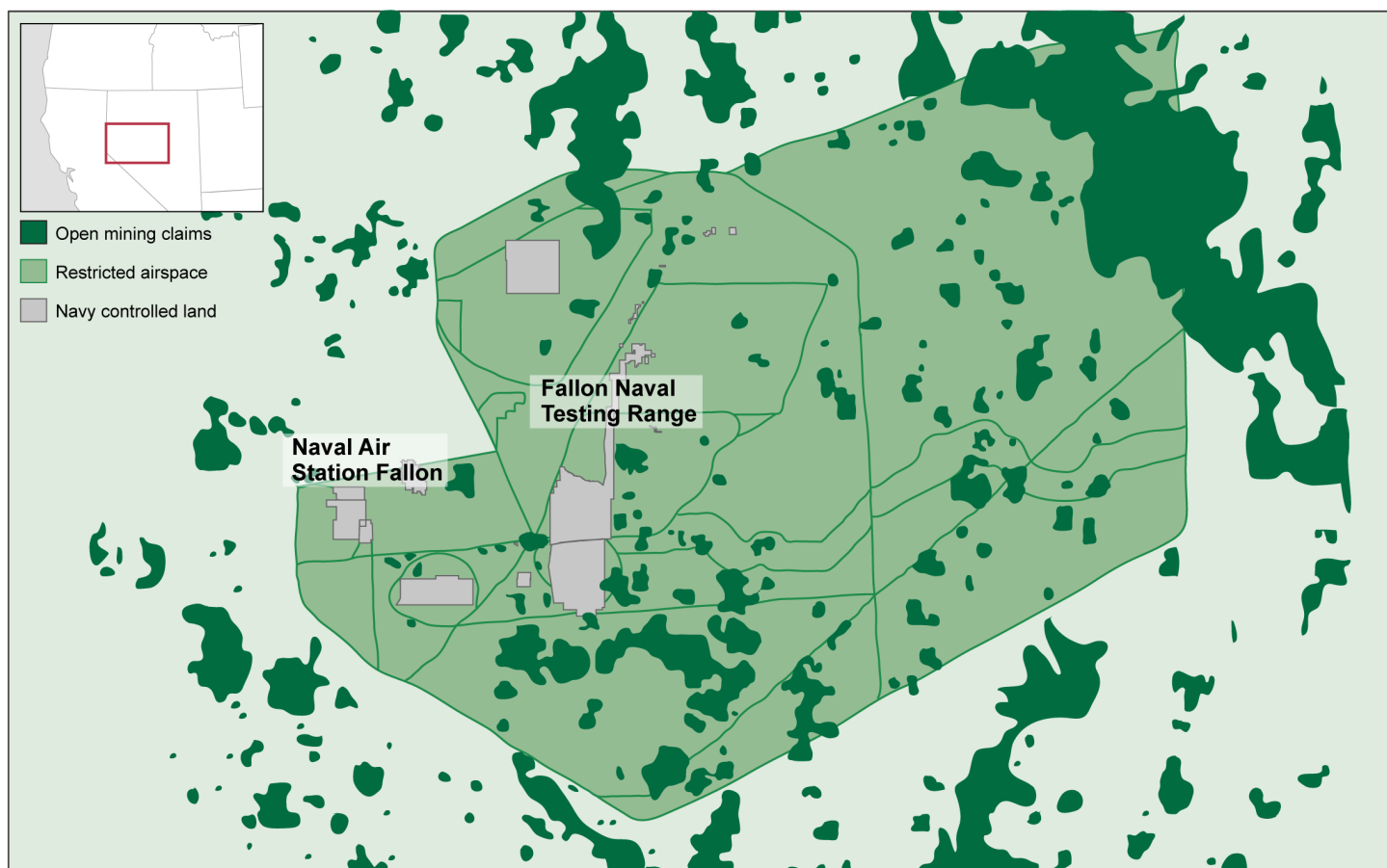
These entities and processes may apply to a wide variety of activities that can occur in proximity to DOD test and training ranges, including renewable and conventional energy projects, mineral extraction (mining), and oil and natural gas exploration. For example, the Bureau of Land Management grants mining rights on federal land near DOD ranges. Moreover, as discussed above, the Bureau also administers minerals mining claims, including those in proximity to DOD's test and training ranges. Figure 2 shows the mining claims on federal land outside of the Fallon Training Range Complex in Nevada.

⁹ Pub. L. No. 91-190 (1970), codified as amended at 42 U.S.C. §§ 4321-4347.

¹⁰ The National Environmental Policy Act and its implementing regulations require the preparation of Environmental Impact Statements for, among other things, proposals of major federal actions significantly affecting the quality of the human environment. See 40 C.F.R. § 1502.3. By regulation, federal actions in this context are not limited to actions undertaken directly by the government or with federal assistance, but also include federal approval of specific projects, such as construction or management activities located in a defined geographic area, including actions approved by permit or other regulatory decision. See 40 C.F.R. § 1508.18.

¹¹ Regulations implementing the National Environmental Policy Act of 1969 define a cooperating agency as any federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal for, among other things, major federal actions significantly affecting the quality of the human environment. See 40 C.F.R. § 1508.5.

Figure 2: Mining Claims Near Fallon Range Training Complex



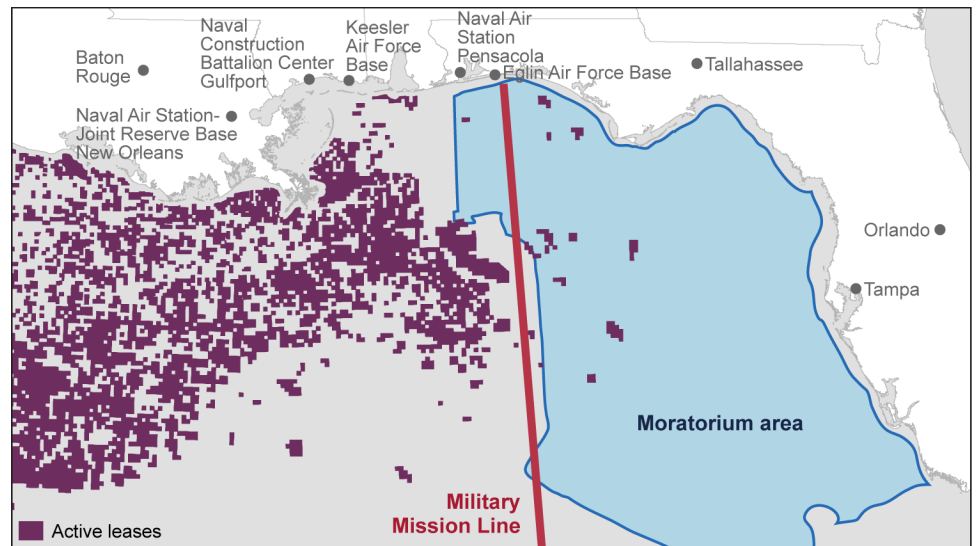
Source: GAO analysis of Navy and Bureau of Land Management information. | GAO-15-149

Similar to the large number of mining claims near the Fallon Range Training Complex, there is also extensive oil and gas exploration in the Gulf of Mexico near many onshore Navy and Air Force installations, including Eglin Air Force Base, where DOD set up the Integrated Training Center for the F-35 Joint Strike Fighter. In 2006, Congress passed the Gulf of Mexico Energy Security Act of 2006¹² which opened several areas of the Gulf of Mexico to new oil and gas leasing, but also placed a moratorium on oil and gas leases in portions of the gulf, in part to avoid

¹² Pub. L. No. 109-432, Division C (2006).

interfering with DOD's training mission.¹³ Figure 3 below shows oil and gas activity as of October 2013 in the Gulf of Mexico and the moratorium area.

Figure 3: Oil and Gas Activity in the Gulf of Mexico as of October 2013



Source: GAO analysis of Department of Defense (DOD) and Bureau of Ocean Energy Management (BOEM) data. | GAO-15-149

Risk Assessment Process

Our prior work has shown that utilizing a risk management approach allows an agency to more effectively prioritize its resources and enhance its ability to respond to a threat.¹⁴ Under DOD Instruction 3020.45, DOD utilizes a risk management approach to manage its critical infrastructure program.¹⁵ According to DOD, risk management is the process of

¹³ To achieve this, the act established the military mission line at 81° 41' west longitude to protect the missions of military installations on the western shore of Florida.

¹⁴ [GAO-02-150T](#) and [GAO-07-1077](#). For these reports, we determined the key elements of a risk management approach by examining variations of this approach used by DOD, a large U.S. multi-national corporation, and the Interagency Commission on Crime and Security in U.S. Seaports.

¹⁵ DOD Instruction 3020.45. DOD's Defense Critical Infrastructure Program includes the development of adaptive plans and procedures to mitigate risk, restore capability in the event of loss or degradation, support incident management, and protect defense critical infrastructure-related sensitive information.

identifying, assessing, and controlling risks arising from operational factors and making decisions that balance risk cost with mission benefits.

A key step in this approach is to conduct a risk assessment to provide a way to continuously evaluate and prioritize risks and recommend strategies for mitigation. DOD's risk assessment process has three core elements: criticality, vulnerability, and threats.

- **Criticality** identifies the consequence of the loss of a particular asset based on national security concerns or the impact to DOD's missions. A criticality assessment identifies key assets and infrastructure that support DOD missions, units, or activities and are deemed mission critical by military commanders or civilian agency managers.
- **Vulnerability** is a weakness or susceptibility of an installation, system, asset, application, or its dependencies that could cause it to suffer a degradation or loss as a result of having been subjected to a certain level of threat or hazard. A vulnerability assessment is a systematic examination of the characteristics of an installation, system, asset, or its dependencies to identify vulnerabilities.
- **Threats** refer to an adversary having the intent, capability, and opportunity to cause loss or damage.

DOD Has Not Conducted a Risk Assessment on Foreign Encroachment at Its Test and Training Ranges

DOD has not conducted a risk assessment that includes prioritizing ranges based on mission criticality, determining their vulnerabilities to foreign encroachment, and assessing the degree to which foreign encroachment could pose a threat to the mission of the ranges. As a result, the department does not know the extent to which foreign encroachment poses a threat to its test and training ranges.

Neither DOD nor the services have determined which of their ranges are the most critical to protect or assessed any vulnerabilities and threats posed by foreign encroachment. As discussed above, utilizing a risk management approach, which includes conducting a risk assessment, allows an agency to more effectively prioritize its resources and enhance its ability to respond to a threat.¹⁶ A DOD instruction governing its critical infrastructure program states that determining the criticality of key assets

¹⁶ [GAO-02-150T](#) and [GAO-07-1077](#).

is a core element of conducting a risk assessment.¹⁷ While this instruction provides a framework that could be used to manage critical infrastructure across the department, it does not specifically mention risk assessment in relation to foreign encroachment. Rather, it establishes policy to manage the identification, prioritization, and assessment of defense critical infrastructure as a comprehensive program. Therefore, this instruction could be used by DOD as a model for how to deal with the issue of foreign encroachment.

Navy and Air Force officials said that the lack of an established methodology or criteria, as well as the unique mission capabilities of each range, make it difficult to determine the relative criticality of each range as it relates to foreign encroachment, including which ranges would be the most valuable collection points for foreign adversaries trying to gather intelligence and which ranges house the most sensitive test and training activities. In addition, the services do not have guidance on how to conduct such an assessment because the issue of foreign encroachment is new. However, DOD has resolved similar challenges in the past. For instance, in an October 2009 review of DOD's management of electrical disruptions, we found that DOD had not developed guidelines for addressing the unique challenges related to conducting some vulnerability assessments of electrical power assets. We recommended that DOD develop explicit guidelines, based on existing Defense Critical Infrastructure Program guidance, for assessing critical assets' vulnerabilities to long-term electrical power disruptions.¹⁸ DOD concurred with this recommendation and developed a tool for assessing critical assets' vulnerabilities to power disruptions. Similarly, specific guidance on foreign encroachment could assist DOD and the services in managing this issue.

Some DOD and Navy officials told us that they have been considering conducting a criticality assessment in relation to foreign encroachment. However, only the Navy has begun taking steps toward doing so. Specifically, Navy officials stated that they are currently developing

¹⁷ DOD Instruction 3020.45, *Defense Critical Infrastructure Program (DCIP) Management* (Apr. 21, 2008).

¹⁸ GAO, *Defense Critical Infrastructure: Actions Needed to Improve the Identification and Management of Electrical Power Risks and Vulnerabilities to DOD Critical Assets*, [GAO-10-147](#) (Washington, D.C.: Oct. 23, 2009).

guidance designed to assess the criticality of Navy ranges in terms of foreign encroachment and expect this guidance to be issued sometime during 2015; however, as of December 2014, little progress has been made in developing this guidance. These officials further stated that, once guidance is finalized, they intend to begin the assessment process. Officials told us that they expect that, once this assessment process is complete, it will be a critical component of any effort to prioritize ranges by their importance. This, in turn, could support any Navy efforts to address foreign encroachment by targeting counter-intelligence activities on the most critical ranges.¹⁹

According to DOD, another core element of a risk assessment is to determine vulnerabilities, or the weakness of an asset that could cause it to suffer a loss. DOD and the services have raised concerns about the level of vulnerability facing some of their test and training ranges with regard to foreign encroachment. Specifically, Navy and Air Force headquarters officials as well as officials from all four of the ranges in our review told us that they had concerns about the number of investment-related projects by foreign entities occurring near their respective ranges—projects that they stated could pose potential security threats. Those officials told us that they were particularly concerned that foreign entities may have an increased ability to observe sensitive military testing or training activities if they are able to establish a persistent presence outside the services' test or training ranges. Further, officials at all four of the ranges in our review expressed such concerns to varying degrees. For example, officials from the Fallon Range Training Complex and the Nevada Test and Training Range, both of which are used to provide realistic air-to-ground combat training, told us that they have observed a number of energy development and mining projects near both ranges that may be owned or controlled by foreign entities. Officials at Eglin Air Force Base, where the Air Force conducts land, air, and water test and training, and at White Sands Missile Range, where the services evaluate new weapon systems, also expressed concerns about the potential for foreign entities to observe testing and training activities at their respective ranges. DOD officials noted, however, that the services have not conducted formal assessments to determine the extent to which these vulnerabilities exist at their ranges.

¹⁹ As of July 2014, DOD has not initiated any actions that would support a criticality assessment and there are no indications that the other services have any plans to pursue any actions in this area.

According to DOD's instruction, along with establishing the criticality and vulnerability of assets, the third core element of a risk assessment is to assess the threats and hazards. Counterintelligence officials from the services' criminal investigation agencies said that they have conducted some threat or risk assessments on specific locations or installations, as well as investigated some individual instances of commercial activity. However, they have not conducted threat assessments focused on foreign encroachment across DOD's test and training ranges. Although these counterintelligence officials have investigated some individual instances of commercial activity, they have not conducted a systematic assessment of this potential threat because in most of the cases that they have investigated, they have not seen evidence that foreign encroachment posed a threat to the range. Therefore, they were reluctant to assign additional resources to this issue. DOD officials stated that given the uncertainty surrounding this issue, a risk assessment would be beneficial. However, DOD has not taken steps to initiate such a risk assessment or established a time frame for doing so. Without guidance from DOD for the services to follow in conducting a risk assessment that establishes a time frame for completion, identifies critical ranges, and then assesses vulnerabilities and threats to these ranges, DOD may not be able to determine what, if any, negative impact foreign encroachment may be having on its test or training ranges.

DOD Does Not Have Sufficient Information to Fully Identify Instances of Foreign Encroachment near Its Domestic Test and Training Ranges

DOD does not have information that officials say they need, such as the ownership of companies conducting business on federally managed land near DOD's ranges, to determine if specific transactions on federally owned or managed land pose a threat to ranges. Leading practices state that to support decision-making, it is important for organizations to have complete, accurate, and consistent information.²⁰ Range officials at all four installations in this review stated that they need more specific information to determine whether an individual transaction poses a threat to their range. Further, DOD officials have identified some possible sources or methods for obtaining this information but have not formally collaborated with other federal agencies on how to gather this

²⁰ See [GAO-13-201](#), [GAO-12-359](#), and [GAO/GGD-96-118](#). In these reports, we used criteria we developed by examining leading public organizations that were successfully pursuing management reform initiatives and becoming more results-oriented. We identified three key steps to result-oriented organizations, including using performance information as a basis for decision making.

information. Collaboration can be broadly defined as any joint activity that is intended to produce more public value than could be produced when organizations act alone. Leading practices state that agencies can enhance and sustain collaborative efforts by engaging in several practices that are necessary for a collaborative working relationship. These practices include identifying and addressing needs by leveraging resources; agreeing on roles and responsibilities; and establishing compatible policies, procedures, and other means to operate across agency boundaries.²¹

In order for DOD to determine if an entity engaging in investment activities near one of its test or training ranges poses a potential risk for foreign encroachment, DOD officials said that they would need additional identifying information from governing federal agencies responsible for issuing public land-use permits or leases. Such information could include, for example, identification of any parent companies or whether a U.S.-based entity is owned or controlled by a foreign entity. Service headquarters and range officials at all four ranges in our review said that they generally have good informal working relationships with governing federal agencies that allow them to find out some information about transactions on federal land near the ranges and that federal agency officials, including those from the Bureau of Land Management or the Bureau of Ocean Energy Management, frequently contact them to informally let them know of a proposed transaction near the range.

Despite these relationships, DOD and range officials expressed concerns that these governing agencies are not able to provide DOD with the necessary information to identify potential encroachment. Officials from the Bureau of Land Management, the Bureau of Ocean Energy Management, and the Bureau of Safety and Environmental Enforcement

²¹ See [GAO-06-15](#). Other practices include defining and articulating a common outcome; establishing mutually reinforcing or joint strategies; developing mechanisms to monitor, evaluate, and report on results; and reinforcing individual accountability for collaborative efforts through performance management systems. In [GAO-06-15](#), we identified key practices that can help enhance and sustain agency collaboration. To identify practices for sustaining collaboration, we reviewed academic literature and prior GAO and Congressional Research Service reports in this area. We interviewed experts in coordination, collaboration, partnerships, and networks from organizations such as the National Academy of Public Administration, the IBM Center for The Business of Government, and the University of California, at Berkeley. We also considered how the Government Performance and Results Act and the Office of Management and Budget address collaboration among agencies.

within the Department of the Interior and the Federal Aviation Administration within the Department of Transportation told us that they face legal, regulatory, or resource challenges that may prevent them from collecting information that is unrelated to their respective missions, leading to knowledge gaps that may be acceptable for approving leases or permits on federal lands but could adversely affect DOD's ability to identify potential security threats near the ranges. For example:

- The Paperwork Reduction Act of 1980 requires, among other things, that agencies undertake a number of procedural steps before collecting information from the public, including justifying the need for such information collection to the Office of Management and Budget. As part of this process individual agencies are required to certify to the Office of Management and Budget, among other things, that proposed collections of information are necessary for the proper performance of the functions of the agency.²² As a result, Department of the Interior officials said that they generally limit the information they collect to what is directly tied to the agencies' respective missions of effective land or resource management. Officials from the Bureau of Land Management said that the information that they are permitted to collect on potential lease-holders or permit applicants is prescribed by regulation based on a longstanding interpretation of their authorizing statute.²³ Further, Federal Aviation Administration officials told us that while they have a process for collecting information about proposed structures that are more than 200 feet in height or are within certain distances of airports or runways, this process is designed to support the agency's mission of maintaining a safe and efficient aerospace system, not to collect the information that DOD would need to help identify instances of foreign encroachment

²² Pub. L. No. 96-511 (1980), codified as amended at 44 U.S.C. § 3501, et seq.

²³ For example, the Mineral Leasing Act of 1920 allows the Bureau of Land Management to issue mineral leases to U.S. citizens, associations of U.S. citizens, any corporation organized under the laws of the United States or one of its states or territories, and certain other groups or organizations. Bureau of Land Management officials said that foreign entities can legally acquire or hold onshore mineral leases only through ownership or control of an entity that meets the requirements set forth in the Mineral Leasing Act, such as a wholly-owned subsidiary corporation incorporated under the laws of the United States. Additionally, according to these officials, the law and implementing regulations do not establish any eligibility or information collection requirements concerning the nationality of operators that a lessee may hire to conduct drilling or other mineral production related activities. Thus, under current regulations, the Bureau of Land Management does not collect information on the nationalities of hired operators.

on its ranges. Therefore, officials from these agencies expressed that they believe they would need some type of change in either their authorizing statutes or regulations to be able to collect this information.

- Agency officials also raised resource challenges as an issue in collecting additional information. Department of the Interior officials expressed concerns that any changes to either their statutory authorities or implementing regulations in order to collect additional information may create additional costs to the Department of the Interior as its bureaus conduct their respective missions. The officials told us they recognize the challenges DOD faces in identifying potential cases of foreign encroachment, but they also said their agencies' respective missions have little to do with national security issues and agency officials questioned whether, under current law, their appropriations could properly be used to finance data collection unrelated to their mission and for DOD's exclusive use. These officials expressed concerns that changes to their authorities or additional requirements imposed upon them may be burdensome, given their limited available resources.

DOD has had some success in obtaining information that could be used to identify activities that could provide opportunities for foreign encroachment, but has not discussed options for obtaining additional information with other federal agencies. However, as discussed above, DOD officials said that when they do find out that an entity proposing a project near a range is foreign-owned, they generally obtain information on an informal basis through developed interagency relationships and not through any systematic process. For example, at some DOD installations, officials work with Bureau of Land Management district and field office managers to receive notifications on or discuss projects that may have an impact on DOD activities or interests. At one location—Naval Air Station Fallon—the Navy and the Bureau of Land Management have established a military liaison position to provide further coordination on both Navy and Bureau of Land Management interests due to the large number of energy development and mining projects occurring near the Fallon Range Training Complex. This military liaison position is funded by the Navy and the duties of the liaison include coordinating with the Navy on use of public lands and providing advice on highly technical and complex programs. In addition, Bureau of Land Management and DOD installation officials said that other DOD installations have good working relationships with their local Bureau of Land Management offices to discuss issues of importance to both agencies. Through these relationships, individual ranges are often notified of potential transactions near the ranges, but due to reasons stated above, range officials at the four installations in our

review stated that they still feel that they need additional information on the transactions to be able to assess whether a transaction poses a threat to the range. The Navy, through the Center for Naval Analysis, recently conducted a study on this issue and identified additional sources of information that DOD could possibly leverage, including the Bureau of Economic Analysis within the Department of Commerce. Because this is an emerging issue for DOD, DOD has not taken steps to fully identify all potential sources of information or to reach out to other federal agencies that may have this information to discuss options for obtaining it. Without engaging potential sources of information on commercial activities near its ranges, DOD is hindered in its efforts to determine if a project could present a threat to test or training range activities.

Conclusions

DOD's concerns about various forms of encroachment have been long-standing. As potential opportunities for foreign encroachment have presented themselves, some in DOD have become increasingly concerned about the potential vulnerability and risk to its domestic air, land, and sea test and training ranges from such encroachment. However, DOD has not determined the likelihood of foreign encroachment through persistent presence on federally owned or managed lands in proximity to the test and training ranges, versus other means that may give foreign adversaries the opportunity to observe new weapon systems and operational tactics. Although the Navy has taken steps to develop guidance on assessing the risk of foreign encroachment to its ranges, as of December 2014, this guidance has not been issued. Further, the other departments have not taken any steps toward developing this type of guidance. Without guidance from DOD for the military departments to follow in conducting a risk assessment—including a time frame for completion—that identifies critical ranges, then assesses vulnerabilities and threats to these ranges, DOD may not be able to determine what, if any, negative impact foreign encroachment may be having on its test or training ranges. In addition, without a means to collect more information on the entities conducting business in proximity to its ranges, DOD cannot adequately assess individual transactions as to their potential threat to a range. Because of the degree to which DOD and other agencies must manage legal, regulatory, and resource constraints in taking action to identify and address any significant encroachment concerns, it is critical that DOD have a complete picture of where it is at greatest risk, what information is needed to fully assess any risks, and what options are available to mitigate or manage risks in a manner that is consistent with DOD and other agencies' missions and resources.

Recommendations for Executive Action

To improve the ability of the Department of Defense and the military departments to manage the potential for foreign encroachment near their test and training ranges, we recommend that the Secretary of Defense, in consultation with the military departments, develop and implement guidance for assessing risks to test and training ranges from foreign encroachment in particular, to include:

- determining the criticality and vulnerability of DOD's ranges and the level of the threat; and
- a time frame for completion of risk assessments.

To identify potential foreign encroachment concerns on federally-owned land near test and training ranges, we recommend that the Secretary of Defense collaborate with the secretaries of relevant federal agencies, including at a minimum the Secretaries of the Interior and Transportation, to obtain additional information needed from federal agencies managing land and transactions adjacent to DOD's test and training ranges. If appropriate, legislative relief should be sought to facilitate this collaborative effort.

Agency Comments

In a written response on a draft of this report, DOD concurred with both recommendations. In addition, the Department of the Interior and the Department of Treasury provided technical comments, which we incorporated in our report as appropriate. The Department of Justice and the Department of Transportation did not provide any comments. DOD's comments are reproduced in their entirety in appendix III.

We are sending copies of this report to the appropriate congressional committees; the Secretaries of Defense, the Army, the Navy, and the Air Force; the Secretaries of Interior, Transportation, and Treasury; the Attorney General of the United States; and the Director, Office of Management and Budget. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4523 or leporeb@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last

page of this report. GAO staff who made key contributions to this report are listed in appendix IV.

A handwritten signature in black ink, reading "Brian Lepore". The signature is written in a cursive style with a large, stylized "B" and "L".

Brian J. Lepore, Director
Defense Capabilities and Management

List of Committees

The Honorable Carl Levin
Chairman
The Honorable James Inhofe
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Richard J. Durbin
Chairman
The Honorable Thad Cochran
Ranking Member
Subcommittee on Defense
Committee on Appropriations
United States Senate

The Honorable Howard P. "Buck" McKeon
Chairman
The Honorable Adam Smith
Ranking Member
Committee on Armed Services
House of Representatives

The Honorable Rodney Frelinghuysen
Chairman
The Honorable Pete Visclosky
Ranking Member
Subcommittee on Defense
Committee on Appropriations
House of Representatives

Appendix I: Scope and Methodology

To determine the extent to which DOD has conducted a risk assessment to identify the existence and extent of any threats posed by foreign encroachment to its domestic air, land, and sea test and training ranges, we reviewed statutes, regulations, and guidance pertaining to federal agencies' oversight of transactions by private entities on air, land, and sea. We compared DOD's efforts to key elements of conducting a risk assessment that we previously developed as well as criteria for identifying and protecting critical infrastructure that DOD uses in managing its Defense Critical Infrastructure Program.¹ We also reviewed DOD counterintelligence guidance and intelligence reporting on surveillance threats to DOD activities and facilities. To understand DOD's concerns related to the potential presence of foreign entities near its test and training ranges, we interviewed appropriate officials from the Office of the Secretary of Defense as well as the Departments of the Navy, Army, and Air Force. We interviewed officials from DOD and the services' intelligence agencies, as well as the Defense Intelligence Agency and the Federal Bureau of Investigation, to understand the extent to which any foreign encroachment concerns raised are based on information provided by the intelligence community. We also interviewed appropriate officials from the entities that govern activities on federally managed land in order to understand how and the extent to which DOD works with civilian governing agencies to identify areas of potential foreign encroachment., i.e., the Bureau of Land Management and Bureau of Ocean Energy Management (both within the Department of the Interior), which have responsibility for approving and administering permits and leases for projects on public lands, and the Federal Aviation Administration (within the Department of Transportation), which is responsible for reviewing potential obstructions to aviation safety. Finally, we interviewed officials from the Department of the Treasury, which chairs the Committee on Foreign Investment in the United States (CFIUS).

¹ See GAO, *Homeland Security: Key Elements of a Risk Management Approach*, [GAO-02-150T](#) (Washington, D.C.: Oct. 12, 2001); and *Defense Infrastructure: Management Actions Needed to Ensure Effectiveness of DOD's Risk Management Approach for the Defense Industrial Base*, [GAO-07-1077](#) (Washington, D.C.: Aug. 31, 2007). For these reports, we determined the key elements of a risk management approach by examining variations of this approach used by DOD, a large U.S. multinational corporation, and the Interagency Commission on Crime and Security in U.S. Seaports. Also see DOD Instruction 3020.45, *Defense Critical Infrastructure Program (DCIP) Management*, (Apr. 21, 2008), where DOD implements and establishes policy to manage the identification, prioritization, and assessment of defense critical infrastructure.

To determine the extent to which DOD has obtained information on specific transactions near test and training ranges that it needs to determine if these transactions pose a threat to the range, we interviewed officials from OSD and the military service headquarters, as well as military department intelligence agencies, the Defense Intelligence Agency, and the Federal Bureau of Investigation. We also interviewed officials from selected federal agencies including the Bureau of Land Management and Bureau of Ocean Energy Management within the Department of the Interior, the Federal Aviation Administration within the Department of Transportation, and the Department of the Treasury, who all have a role overseeing transactions on federal land surrounding DOD's ranges. We compared DOD's efforts in obtaining information to leading practices on decision making² and collaboration from our prior work.³

For both objectives, we spoke with officials from selected DOD test and training ranges: the Nevada Test and Training Range, Nevada (Air Force); the Fallon Range Training Complex, Nevada (Navy); Eglin Air Force Base, Florida (Air Force); and White Sands Missile Range, New Mexico (Army). After discussions with DOD officials, we selected locations (1) that included at least one range from each military department, (2) where security encroachment from foreign countries on federally owned land near test or training ranges has been raised as a

² See GAO, *Defense Logistics: A Comprehensive Strategy is Needed to Guide DOD's In-Transit Visibility*, [GAO-13-201](#) (Washington, D.C. Feb. 28, 2013); *Humanitarian and Development Assistance: Project Evaluations and Better Information Sharing Needed to Manage the Military's Efforts*, [GAO-12-359](#) (Washington, D.C.: Feb. 8, 2012); and *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington, D.C., June 1996). In these reports, we used criteria we developed by examining leading public organizations that were successfully pursuing management reform initiatives and becoming more results-oriented. We identified three key steps to result-oriented organizations, including using performance information as a basis for decision making.

³ See GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration Among Federal Agencies*, [GAO-06-15](#), (Washington, D.C., Oct. 21, 2005). This report identifies key practices that can help enhance and sustain agency collaboration. To identify practices for sustaining collaboration, we reviewed academic literature and prior GAO and Congressional Research Service reports in this area. We interviewed experts in coordination, collaboration, partnerships, and networks from organizations such as the National Academy of Public Administration, the IBM Center for The Business of Government, and the University of California, at Berkeley. We also considered how the Government Performance and Results Act and the Office of Management and Budget address collaboration among agencies.

concern, and (3) where ranges were surrounded by federally controlled land or ocean areas, thus requiring coordination with other federal agencies. At the Nevada Test and Training Range and the Fallon Range Training Complex we also interviewed officials from the Bureau of Land Management and the Federal Bureau of Investigation, as these agencies have responsibilities for the approval of public-use leases and permits or domestic counterintelligence efforts outside of both of these locations, respectively. Because federally owned land is disproportionately located in the western United States, the majority of our visits and discussions were with ranges in that area. The information from these four ranges is not generalizable to all of DOD's domestic ranges. We limited the scope of this engagement to projects in which the federal government plays a role in approving, evaluating, or permitting the project.

In addressing our objectives, we contacted officials representing a wide range of organizations (see table 1).

Table 1: List of Organizations Contacted

Department of Defense
Office of the Secretary of Defense
Under Secretary of Defense for Personnel and Readiness
Force Readiness and Training Directorate
Under Secretary of Defense for Intelligence
Counterintelligence Division
Under Secretary of Defense for Acquisition, Technology, and Logistics
DOD Committee on Foreign Investment in the United States
Readiness and Environmental Protection Integration
Siting Clearinghouse
U.S. Navy
Department of the Navy Headquarters, Washington, D.C.
U.S. Fleet Forces Command, Norfolk, Virginia
Naval Criminal Investigative Service, Quantico, Virginia
Office of Naval Intelligence, Washington, D.C.
Naval Air Station Fallon, Nevada – Fallon Range Training Complex
U.S. Army
Department of the Army Management Office for Training Simulations
Deputy Assistant Secretary for the Army for Environment, Safety, and Occupational Health
Army Test and Evaluation Command

Army Counterintelligence Center, Fort Meade, Maryland
White Sands Missile Range, New Mexico
U.S. Air Force
Department of the Air Force Headquarters, Washington, D.C.
Air Force Test Resources and Infrastructure Division
Air Force Office of Special Investigations, Quantico, Virginia
Nellis Air Force Base, Nevada
Nevada Test and Training Range
Eglin Air Force Base, Florida
Defense Intelligence Agency, Washington, D.C.
Defense Security Service, Quantico, Virginia
Department of Justice
Federal Bureau of Investigation
Headquarters, Washington, D.C.
Reno, Nevada
Las Vegas, Nevada
Department of the Interior
Bureau of Land Management
Headquarters, Washington, DC.
Stillwater Field Office, Carson City, Nevada
Las Vegas Field Office, Las Vegas, Nevada
Tonopah Field Office, Tonopah, Nevada
Caliente Field Office, Caliente, Nevada
Yuma Field Office, Yuma, Arizona
Lower Sonoran Field Office, Phoenix, Arizona
Gila District, Tucson, Arizona
Bureau of Ocean Energy Management
Bureau of Safety and Environmental Enforcement
Department of Transportation
Federal Aviation Administration, Headquarters, Washington, D.C.
Department of the Treasury
Office of Investment Security, Washington, D.C.

Source: GAO | GAO-15-149

We conducted this performance audit from July 2013 to December 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that

the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Committee on Foreign Investment in the United States

The only formal option in regard to transactions involving foreign companies or entities that accounts for national security concerns is the Committee on Foreign Investment in the United States (CFIUS) process. However, the CFIUS process is limited in two main ways. First, CFIUS only reviews transactions that meet certain criteria. Specifically, the CFIUS process reviews covered transactions, which include any merger, acquisition, or takeover that results in foreign control of any person engaged in interstate commerce in the United States.¹ However, there are also many types of non-covered transactions that could result in a foreign entity having access to or a persistent presence near DOD ranges. These non-covered transactions include starts-ups, as well as acquisitions of assets other than an interest in a U.S. company, such as equipment or intellectual property. In addition, foreign purchases or leases of private real property—for business or non-business uses—near installations would not be covered by CFIUS. Second, CFIUS primarily relies on voluntary reporting of transactions by the involved parties to bring covered transactions to its attention, although the President or any member of CFIUS can also initiate a review of a covered transaction should they discover its occurrence.² In the absence of voluntary reporting by the parties involved or independent discovery of the transaction by CFIUS, however, covered transactions will not be reviewed.

For covered transactions it does review, CFIUS determines the effects of the transaction on national security, which includes consideration of a number of factors, including the potential national security-related effects on United States critical infrastructure.³ After a review of a covered transaction is initiated, the Committee evaluates the transaction and then either approves the transaction, approves the transaction with mitigation or makes a recommendation to the President to block the transaction. In the case of transactions that the Committee approves with mitigation, the

¹ In this context the term “person” includes corporations and other business associations with legal personhood.

² These self-initiated reviews can be undertaken even after the transaction has already been concluded. According to Treasury officials, because such a review could result in suspension of the transaction (or divestment), parties have an incentive to self-report.

³ A covered transaction is defined as any merger, acquisition, or takeover that results in foreign control of any person engaged in interstate commerce in the United States. In this context the term “person” includes corporations and other business associations with legal personhood.

Committee and participating companies typically execute national security agreements that impose some type of limitations or monitoring of projects, such as limitations on the citizenship of employees of the company or reporting of visitation by foreign citizens. However, according to DOD and installation officials, these agreements are often difficult to enforce. Finally, if the President finds that (1) there is credible evidence that the foreign interest exercising control might take action that will impair the national security and that (2) other laws, in the judgment of the President, do not provide adequate and appropriate authority for the President to protect national security, then the President can direct that the transaction be suspended or prohibited. This has only happened rarely, though. For example, in 1990 the President ordered a foreign-owned company to divest its acquisition of a manufacturing firm producing metal parts and assemblies for aircraft, and in 2012 the President blocked a foreign acquisition of a U.S. energy firm that was constructing a wind-turbine plant near a specialized Navy training facility.

Appendix III: Comments from the Department of Defense



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

SEP 08 2014

Mr. Brian Lepore
Director, Defense Capabilities and Management
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Lepore:

Thank you for the opportunity to review the draft report, *Defense Infrastructure: Risk Assessment Needed to Identify if Foreign Encroachment Threatens Test and Training Ranges* (GAO-14-637). Our response to the GAO recommendations is attached.

My point of contact for this effort is Mr. Fred Engle at 703-693-3478, or by e-mail (NIPR) at frederick.c.Engle.civ@mail.mil. Thank you again for the opportunity to review the report.

Sincerely,

Frank C. DiGiovanni
Acting Deputy Assistant Secretary
of Defense (Readiness)

Attachment:
As stated

**GAO DRAFT REPORT DATED JULY 18, 2014
GAO-14-2014 (GAO CODE 351835)**

**“DEFENSE INFRASTRUCTURE: RISK ASSESSMENT
NEEDED TO IDENTIFY IF FOREIGN ENCROACHMENT
THREATENS TEST AND TRAINING RANGES”**

**DEPARTMENT OF DEFENSE COMMENTS
TO THE GAO RECOMMENDATIONS**

RECOMMENDATION 1: To improve the ability of the Department of Defense and the military departments to manage the potential for foreign encroachment near their test and training ranges, GAO recommends that the Secretary of Defense, in consultation with the military departments, develop and implement guidance for assessing risks to test and training ranges from foreign encroachment in particular, to include:

- Determining the criticality and vulnerability of DoD’s ranges and the level of the threat; and
- A timeframe for completion of risk assessments.

DoD RESPONSE: Concur

RECOMMENDATION 2: To identify potential foreign encroachment concerns on federally-owned land near test and training ranges, GAO recommends that the Secretary of Defense collaborate with the secretaries of relevant federal agencies, including at a minimum the Secretaries of the Interior and Transportation, to obtain additional information needed from federal agencies managing land and transactions adjacent to DoD’s test and training ranges. If appropriate, legislative relief should be sought to facilitate this collaborative effort.

DoD RESPONSE: Concur

DoD is currently working with the Department of the Interior on a pilot project to develop a process that will provide information regarding land transactions on the outer continental shelf. DoD will seek collaboration with other federal land management agencies over the next four months. Legislative relief is being considered by DoD.

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Brian Lepore, (202) 512-4523 or leporeb@gao.gov

Staff Acknowledgments

In addition to the contact named above, GAO staff who made key contributions to this report include Maria Storts, Assistant Director; Mark Wielgoszynski, Assistant Director; Leslie Bharadwaja; Simon Hirschfeld; Terry Richardson; Amie Lesser; Erik Wilkins-McKee; Michael Willems; and Richard Winsor.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (<http://www.gao.gov>). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to <http://www.gao.gov> and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on [Facebook](#), [Flickr](#), [Twitter](#), and [YouTube](#). Subscribe to our [RSS Feeds](#) or [E-mail Updates](#). Listen to our [Podcasts](#). Visit GAO on the web at www.gao.gov.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Website: <http://www.gao.gov/fraudnet/fraudnet.htm>

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Katherine Siggerud, Managing Director, siggerudk@gao.gov, (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548

